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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,034	03/25/2004	Robert Allan Young	PUS-P001-041	5815
35246 7590 02/20/2007 MOETTELI & ASSOCIES SARL CASE POSTALE 486 GENEVA, CH-1211 SWITZERLAND			EXAMINER SHAFFER, RICHARD R	
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			02/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/809,034

Applicant(s)

YOUNG ET AL.

Examiner

Richard R. Shaffer

Art Unit

3733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

Richard Shaffer
Richard Shaffer
February 8th, 2007

Continuation of 3. NOTE: Claim 1 now recites "adapted to lock with threads of a corresponding bone screw" thereby changing the scope of the claim and requiring additional consideration. Applicant has also included a new claim 17 without cancelling a claim. Applicant's other amendments are deemed to correct for the 35 U.S.C. 112, first paragraph rejection, however, due to other claims changing the scope, they will not be entered at this time. Should applicant wish to only correct for the 35 U.S.C. 112, first paragraph without additional claim language, it is recommended that applicant file an additional After Final Amendment.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant states that the holes (56b/c) and slots (58) can not not be interpreted as "overlapping." For holes (56b/c), an infinite amount of "holes" lie concentrically about each hole. Applicant has not used language detailing a figure eight shape hole, a specific value separating the two or more centers of the "overlapping hole," etc. Further, slots (58) can clearly be considered overlapping holes even by applicant's intent of offset by more than zero for two centers without a pinched middle, or again an infinite amount of holes extending longitudinally down the plate into to result in a slot formation rather than a figure eight formation. Applicant also wished for the Examiner to clarify the approximately 15 mm limitation being met by Weaver et al. As explained in the Final Office Action, the plate of Weaver et al is also used for the femur like applicant's. So due to anatomical constraints, the possibility of using any of the "overlapping holes" (according to either interpretation), along with keeping in mind the broadest reasonable interpretation of "approximately," it is deemed that Weaver et al do disclose two sets of overlapping holes being set apart by approximately 15 mm. In other words, it is inherent due to the same intended use and broad limitation of any two sets as well as approximately that allows 15 mm to be considered disclosed, and not necessitating an obviousness analysis. Applicant's final argument relied upon entry of the new limitation in claim 1 which as explained above, is not entered due to a change of scope.